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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,832	03/11/2004	Kevin Lubinsky	C001-101	5026

7590 10/26/2006

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/798,832		LUBINSKY ET AL.	
	Examiner		Art Unit	
	Kurt Rowan		3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6, 8, 9, 10, 12-14 is/are rejected.
- 7) ☒ Claim(s) 7 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sheet must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the sheet.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 6, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaupert (US 4653219) for substantially the same reasons stated in the last Office Action.

The patent to Kaupert shows a fishing device having a line 30b connectable between a fishing line 12b and a hook 72 as shown in Fig. 4. Kaupert shows a parachute 36b.

Kaupert shows a parachute 36 having a plurality of suspension lines 46 each having a first end and a second end with the first end being connected at spaced locations near the periphery of the parachute as shown in Fig. 2. Kaupert shows a first connector 48 attached to the second ends of the suspension lines. In reference to claim 1, it would have been obvious to provide the third embodiment (Fig. 4) of Kaupert with suspension lines of the first embodiment for the purpose to strengthen the parachute as disclosed in Kaupert, column 2, lines 57-59. In reference to claims 13-14, it is not clear if Kaupert

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shows the parachute located near the hook or spaced away from the hook, but it would have been obvious to space the hook and the parachute at a desired distance either near or spaced away to suit different fishing conditions.

3. Claims 8-10, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaupert as applied to claim 1 above, and further in view of Thayer et al. (US 5131183) for substantially the same reasons stated in the last Office Action.

The patent to Kaupert shows a fishing device as discussed above. Kaupert does not show a two part container, but discloses a container to hold the device and line (as discussed below). The patent to Thayer shows a fishing device 10 having a two part container 20, 26 in Fig. 1. In reference to claim 8, it would have been obvious to provide Kaupert with a two part container to store the fishing device for the purpose of camouflaging the device as disclosed by Kaupert in column 4, lines 17-27. In reference to claims 9 and 10, Thayer shows a connector 12 that releases the two parts when a line tension exceeds a certain threshold as shown in Figs. 1-2. In reference to claim 12, Thayer shows the container to function as a lure since the container resembles an egg mass.

Allowable Subject Matter

3. Claims 7 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments filed August 10, 2006 have been fully considered but they are not persuasive. Applicant argues, in response to prior Office Action, that his understanding of the term "parachute" is the commonly understood meaning and the cited art does not teach a "parachute" and on the other hand the examiner has taken the position that a parachute only meaning in air which is not applicable to use in water. Applicant has amended claim 1, and states that the amendment recites an understood feature of a parachute which was not part of the structures shown in the prior art.

5. In response to the present Office Action, applicant argues that Kaupert does not show or disclose a parachute. However, Figs. 2 and 3-4 clearly show an umbrella like water scoop 36 (Fig. 2) which can be considered as a parachute that is in a low drag position in Fig. 1 when a lure 32 is being retrieved and a high drag position in Fig. 2 when a fish has taken the bait and is moving the line 12 away from the fisherman. Applicant argues that Kaupert does not disclose a sheet. However, Kaupert shows a scoop 36 made from a flexible resilient foldable water resistant fabric 42 made from cloth, rubber, metal foil, thin plastic of the like as disclosed in column 2, lines 45-55. Kaupert states that the open configuration exerts a heavy drag on a fish on line 12. Hence, Kaupert shows the structure of a parachute, and discloses and suggest the use of a parachute as the term is commonly practiced. Applicant states that Kaupert does not disclose a flexible sheet, but see column 2, line 51, where Kaupert discloses a flexible, resilient, foldable, water resistant sheet. As shown in Figs. 1-2 of Kaupert, the sheet is flexible axially and radially, since it moves in both the axial and radial directions

when it opens. The ribs 38 of Kaupert do not prevent the fabric from being flexible in the radial direction since the sheet expands radially as it opens. Applicants limitations do not overcome Kaupert since Kaupert may be packed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR